

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICHARD ANTHONY LEWIS,

Defendant-Appellant.

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UNPUBLISHED

March 17, 2005

No. 251880

Mecosta Circuit Court

LC No. 02-004832-FC

Before: Saad, P.J., and Smolenski and Cooper, JJ.

PER CURIAM.

A jury convicted defendant Richard Anthony Lewis of two counts of armed robbery.<sup>1</sup> The trial court sentenced defendant as a fourth habitual offender<sup>2</sup> to two concurrent prison terms of 270 months to fifty years. Defendant appeals his convictions and sentences, and we affirm.

I

Defendant's convictions arise out of the armed robbery of the Next Door Food Store in Mecosta County at approximately 10:00 p.m. on November 9, 2000. Two store employees and a customer each testified that a man came into the store with what appeared to be a gun. The thief was wearing a hooded shirt and a jacket, and his face was covered by a bandana or handkerchief. The robber demanded money and lottery tickets, and one of the store employees placed money from the register into a bag together with instant lottery tickets, and handed the bag to the robber. The thief then ordered the employees and the customer to sit in the corner, and then left.

An employee of the Grunst Brothers party store in Big Rapids in Mecosta County testified that on November 10, 2000, an unidentified man attempted to redeem four lottery tickets. However, when she scanned on of the tickets, the lottery machine alerted the employee that there was a problem with the ticket. She told the man that she could not cash the ticket, but would, instead, need to retain the ticket and contact the Lottery. The man walked out, and got

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<sup>1</sup> MCL 750.529.

<sup>2</sup> MCL 769.12.

into the passenger side of a waiting car. The store employee wrote down the license number of the car. This license number was later discovered to be registered to defendant.<sup>3</sup>

An armed robbery was committed at a party store in Lake County on November 11, 2000. A police investigation led to an arrest warrant being issued for a man named Tom Collins.<sup>4</sup> The Sheriff and Undersheriff of Lake County, working with several law enforcement agencies in adjoining counties where other armed robberies had occurred, learned that Collins was at a home in Big Rapids in Mecosta County. The Lake County Sheriff and Undersheriff went to Big Rapids and met with Detective Steven DeLaney of the Big Rapids Public Safety Department.

The Lake County sheriff [sic], undersheriff, Detective DeLaney, and various other officers who had been involved in investigating the armed robberies and/or conducting surveillance proceeded to a residence on Second Avenue, Big Rapids, Michigan. Mr. Collins was located at that residence, as were two other . . . males who, upon seeing police, were in the process of entering a motor vehicle and trying to leave the premises. Both of these individuals were stopped, one of them was the Defendant . . . . As a result of his encounter with the police that night, the Defendant was arrested, however, as evidence at the protracted hearing on the defense Motion to Suppress revealed, none of the police officers at the house on November 11, 2000, actually arrested the Defendant, advised the Defendant that he was under arrest, or ordered any other police officer to arrest the Defendant. In spite of this rather significant omission, the Defendant was handcuffed, placed in the back seat of a patrol vehicle after being searched, and was taken to the Mecosta County Sheriff's Department for processing and booking. [District Court's Opinion and Order, entered November 30, 2001 (Susan H. Grant, J., 77<sup>th</sup> District Court), pp 1-2.]

Defendant arrived at the Mecosta County jail the night of November 11, 2000. Detective DeLaney arrived at the jail shortly thereafter, advised defendant of his *Miranda*<sup>5</sup> rights, and questioned defendant about several armed robberies that had been committed in Big Rapids. The questioning continued until 3:00 a.m. on November 12, 2000. Detective DeLaney then left the jail, and returned six hours later to continue defendant's interrogation. Lake County Undersheriff Mike Dermeyer and Detective/Sergeant Jeffrey Lentz of the Newaygo County Sheriff's Department also questioned defendant on November 12, 2000, about armed robberies that had occurred in their respective jurisdictions. The police questioned defendant for a total of ten hours on November 12, 2000.

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<sup>3</sup> Defendant stipulated to this fact at trial.

<sup>4</sup> Collins matched the description of the man who tried to cash in the lottery tickets at the Grunst Brothers party store. Additionally, a police officer testified that he pulled over defendant's car during a traffic stop on November 5, 2000, and that defendant was driving the car, and Collins was a passenger.

<sup>5</sup> *Miranda v Arizona*, 384 US 436, 444; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

As a result of a written statement defendant gave to Sergeant Lentz, defendant was transported to the Newaygo County jail on November 13, 2000, and arrested for armed robbery arising out of a November 3, 2000, armed robbery in Newaygo County.

On November 14, 2000, Detective Richard Rau of the Mecosta County Sheriff's Department learned of the November 10, 2000, incident involving the attempt to cash stolen lottery tickets. After Detective Rau learned that the unidentified man got into defendant's car after his unsuccessful attempt to cash the tickets, Detective Rau went to the Newaygo County jail with Detective DeLaney to question defendant about the November 9, 2000, robbery of the Next Door Food Store. After Detective Rau advised defendant of his *Miranda* rights, defendant waived those rights, and gave a statement to Detective Rau and Detective DeLaney in which defendant ultimately confessed to the robbery. Defendant initially told Detective Rau and Detective DeLaney that one of defendant's relatives was involved with the robbery. Eventually, defendant told the detectives that he was accompanied to the Next Door Food Store by Collins and another man. He told the detectives that Collins helped defendant cover his face, and instructed him to go into the store. Defendant told the detectives that he displayed the barrel of a plastic gun, and entered the store and demanded money and lottery tickets.

On November 16, 2000, Detective DeLaney again questioned defendant after defendant was advised of and chose to waive his *Miranda* rights. Defendant gave Detective DeLaney a statement about an incident unrelated to the Next Door Food Store robbery.<sup>6</sup>

Before trial, defendant sought to suppress the statements he made on November 12, 14, and 16, 2000. He argued that the arrest was illegal, and that the statements were inadmissible as "fruit of the tainted tree" stemming from his allegedly illegal arrest. The district court ruled that "although [defendant] was taken to the jail and booked in, he was not arrested nor was [sic] there any grounds to arrest him. For that reason, it seems obvious that any statements he made . . . on November 12, 2000, should be suppressed as the fruit of his unlawful arrest on the night of November 11, 2000."<sup>7</sup> District Court Opinion and Order, *supra*, p 3. However, with respect to defendant's November 14 and 16, 2000, statements, the district court considered the intervening arrest by Newaygo County, together with the passage of time and the fact that defendant was repeatedly advised of his *Miranda* rights before each statement was given. These factors supported the court's ruling that the connection between defendant's illegal November 11, 2000, arrest and his November 14 and 16, 2000, confessions was "sufficiently attenuated to purge the confession of its primary taint." District Court Opinion and Order, *supra*, p 4, citing *People v Feldmann*, 181 Mich App 523; 449 NW2d 692 (1989) and *Brown v Illinois*, 422 US 590; 95 S Ct 2254; 45 L Ed 2d 416 (1975). The district court accordingly granted defendant's motion to

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<sup>6</sup> This incident was apparently the subject of a separate trial.

<sup>7</sup> The prosecution has not filed a cross-appeal to challenge the district court's ruling that the November 11, 2000, arrest was illegal. Though the prosecution attempts to argue that this arrest was, in fact, supported by probable cause, the trial prosecutor conceded, during a pretrial motion on the record, that the arrest was illegal. Moreover, in its brief on appeal, the prosecution states that this Court need not decide the issue of whether defendant's arrest was legal. Accordingly, we will not address the issue of the legality of defendant's arrest.

suppress his November 12, 2000, confessions, but denied his motion to suppress his November 14 and 16, 2000, confessions, and ordered the case to proceed to preliminary examination.

The prosecution filed a pretrial motion with the circuit court to admit all of defendant's statements into evidence. Defendant moved to suppress them. The circuit court adopted the district court's November 30, 2001, order and opinion in its entirety, and suppressed the November 12, 2000, statements, but allowed any statements made thereafter to be admitted. A jury subsequently tried and convicted defendant on two counts of armed robbery in connection with the robbery of the Next Door Food Store.

## II

Defendant argues that the trial court erred when it denied his motion to suppress his November 14 and 16, 2000, confessions. Defendant says that the confessions are the fruit of the illegal November 11, 2000, arrest and that they should be suppressed on that basis.

This Court “‘need not hold that all evidence is “fruit of the poisonous tree” simply because it would not have come to light but for the illegal actions of the police.’” *Brown, supra* at 599, quoting *Wong Sun v United States*, 371 US 471, 487-488; 83 S Ct 407; 9 L Ed 2d 441 (1963).

Rather, the more apt question in such a case is “whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint.” [*Id.*]

“Intervening circumstances can break the causal chain between the unlawful arrest and inculpatory statements, rendering the confession “sufficiently an act of free will to purge the primary taint.”” *People v Kelly*, 231 Mich App 627, 634; 588 NW2d 480 (1998), quoting *Brown, supra* at 602, quoting *Wong Sun, supra* at 486.

This is determined by examining: (1) the time elapsed between the illegal arrest and the confession, (2) the flagrancy of official misconduct, (3) any intervening circumstances, and (4) any circumstances antecedent to the arrest. [*People v Spinks*, 206 Mich App 488, 496; 522 NW2d 875 (1994); *Feldmann, supra* at 529.]

In *Feldmann, supra*, the defendant was involved in unrelated robberies and murders in Washtenaw County and in Dearborn. Detectives from the Washtenaw County Sheriff's Department took the defendant into custody. *Feldmann, supra* at 526-527. The detectives questioned the defendant, and she confessed to the Washtenaw County crimes at 2:00 p.m. the day she was taken into custody. *Id.* at 527. She was then “formally arrested” by the Washtenaw County detectives, and at 2:30 p.m. that same day, a Dearborn police detective questioned her about the Dearborn crimes, and she confessed to those as well. *Id.* The next morning, an accomplice gave the Dearborn detective a story that varied from the defendant's story, and the Dearborn detective returned to the Washtenaw County jail and questioned the defendant again. *Id.* at 528. The defendant gave a revised confession. *Id.* The defendant moved to have all three of her confessions suppressed. *Id.* The trial court ruled that the defendant's arrest by Washtenaw County detectives was illegal, and it suppressed her subsequent confession to the

Washtenaw County crimes. *Id.* However, the trial court denied the defendant's motion to suppress her two confessions to the Dearborn crimes. *Id.* This Court affirmed the trial court's ruling, reasoning that the confessions "proceeded from circumstances attenuated from any initially tainted actions of the Washtenaw County authorities," *id.* at 531, because more than eight hours passed between her illegal arrest and the first of the two challenged confessions, and because of intervening circumstances such as her formal arrest by Washtenaw County authorities. *Id.* at 530.

Here, as in *Feldmann*, defendant was illegally arrested and made a confession that was ultimately suppressed. As in *Feldmann*, defendant here was questioned by detectives from another jurisdiction for unrelated crimes. Here, however, *even more* time passed between defendant's illegal arrest and the challenged confessions. Moreover, whereas the defendant in *Feldmann* was questioned in the same jail on the same day of her arrest, here, defendant was transferred to *a different jail*, placed under arrest *by a different police agency*, and gave his challenged statements three and five days, respectively, after his illegal arrest. Detectives advised defendant of his *Miranda* rights each time they questioned defendant, and defendant, according to detectives, displayed a willingness, if not eagerness, to talk to the detectives. Additionally, Detective Rau, who questioned defendant on November 14, 2000, was not present for defendant's arrest on November 11, 2000, nor did he have any role in defendant's transfer to the Newaygo County jail on November 13, 2000. There is no evidence on the record that defendant was mistreated after his Newaygo County arrest on November 13, 2000, and the record shows that defendant was not deprived of food or water, and that he was allowed sufficient time to rest, and that the interrogations on November 14 and 16, 2000, were not of an excessive length. Accordingly, we conclude that the connection between the challenged confessions and defendant's illegal arrest were sufficiently attenuated to purge the "primary taint" of the illegal detention. *Brown, supra; Kelly, supra; Feldmann, supra.*

As a result of the foregoing, we hold that the trial court did not err when it denied defendant's motion to suppress his confessions.

Affirmed.

/s/ Henry William Saad  
/s/ Michael R. Smolenski  
/s/ Jessica R. Cooper